

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY*In the Matter of*

1998 Biennial Regulatory Review—
Review of International Common Carrier
Regulations

IB Docket No. 98-118

**REPLY COMMENTS OF
TYCO SUBMARINE SYSTEMS LTD.**

Tyco Submarine Systems Ltd. ("TSSL") and the other commenters in this proceeding have almost uniformly endorsed the Commission's proposals to reform its rules for international common carriers building and carrying traffic on undersea cable transmission facilities.¹ No party objected to the Commission's proposal to eliminate the presumption against the use of non-U.S.-licensed submarine cable systems. A few of the commenters expressed concerns about the Commission's proposal to eliminate the duplicative Section 214 application for common carrier submarine cable systems. Without discounting the validity of those concerns, TSSL notes that the Commission's rules—both existing and proposed—and the underlying law already account for those concerns.² The Commission should therefore expeditiously adopt its reform proposals.

¹ See 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations, Notice of Proposed Rulemaking, FCC 98-149 (rel. July 14, 1998) ("NPRM"). See also Comments of Tyco Submarine Systems Ltd., IB Docket No. 98-118 (filed Aug. 13, 1998).

² See Comments of the Federal Bureau of Investigation, IB Docket No. 98-118, at 13-14 (filed Aug. 13, 1998) ("FBI Comments"); Comments of the Secretary of Defense, IB Docket No. 98-118, at 6-7 (filed Aug. 13, 1998) ("DoD Comments").

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First, the Commission's proposals in no way dispense with the requirement for a landing license application—and the accompanying review process—for any international cable to land and operate in the United States. As the Commission noted in its NPRM, the Cable Landing License Act governs the issuance of cable landing licenses.³ Because the Commission grants cable landing licenses on delegated authority from the President—and *not* under the Communications Act of 1934—the Commission has no authority to forbear application or enforcement of the Cable Landing License Act's provisions.⁴ Given these restrictions, the Commission “must continue to require any party seeking to construct an undersea cable to file a cable landing license application pursuant to Section 1.767.”⁵ In turn, Section 1.767 provides that “[t]hese applications are acted upon by the Commission after obtaining the approval of the Secretary of State and such assistance from any executive department or establishment of the Government as it may require.”⁶ The Commission has traditionally provided a public comment period of 28 days, and a reply comment period of 14 days for pending cable landing license applications.⁷

³ See NPRM ¶ 30; “An Act Relating to the Landing and Operation of Submarine Cables in the United States,” *codified as amended at* 47 U.S.C. §§ 34-39 (“Cable Landing License Act”).

⁴ See NPRM ¶ 30 (“Because [the Cable Landing License Act] is not part of the Communications Act, we cannot use our Section 10 forbearance authority to forbear from requiring cable landing licenses.”); Exec. Order No. 10,530, 3 C.F.R. § 189 (1954-58), *reprinted in* 3 U.S.C. § 301 app. (1988).

⁵ NPRM ¶ 30.

⁶ 47 C.F.R. § 1.767(b).

⁷ See, e.g., *Public Notice*, “Non-Streamlined International Section 214, Cable Landing License, and Section 310(b)(4) Applications Accepted for Filing,” Report No. TEL-162-B (June 17, 1998) (placing cable landing license application for Columbus-III Cable System on public notice and providing 28 days for initial public comment).

The FBI may therefore be reassured that to the extent it desires to comment on pending cable landing license applications, the Commission's proposals in the NPRM in no way alter its ability to do so. As DoD and other commenters noted, the Commission has proposed only to eliminate the discriminatory and duplicative aspects of licensing submarine cable systems in the United States.⁸

Second, while DoD may have raised valid concerns about disclosure of the ownership of cable landing stations, the Commission's proposals already account for those concerns. Under the Commission's proposed rules, applications for cable landing licenses—regardless of whether or not they are to operate on a common carrier basis—must contain “[a] list of the proposed owners of the cable system, their voting interests, and their ownership interests by segment in the cable.”⁹ Furthermore, all applications must contain, “[f]or each proposed owner of the cable system, a certification as to whether the proposed owner is, or has an affiliation with, a foreign carrier. Include in the information and certifications required in § 63.18(h)(1) and (2) of this chapter”¹⁰ Thus, an applicant for a cable landing license would be required to disclose the ownership—including the owner's citizenship—of the submarine cable system for each segment, including the cable landing stations. The Commission can therefore address DoD's concerns within the rules proposed in the NPRM.

⁸ See DoD Comments, at 7 (“DOD believes that the national security interest for which it is responsible can be addressed by a pre-grant review of the cable landing license application alone, and that no separate Section 214 application is necessary under the circumstances identified by the Commission.”)

⁹ NPRM, app. A (proposing changes to the text of 47 C.F.R. § 1.767(a)(7)).

¹⁰ *Id.* (proposing new text for 47 C.F.R. § 1.767(a)(8)).

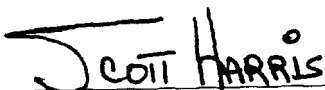
CONCLUSION

For the reasons stated above and in TSSL's initial Comments, the Commission should adopt its proposals to eliminate (1) the presumption against use of non-U.S.-licensed submarine cable systems by carriers and (2) other burdensome requirements for submarine cable landing license applications.

Respectfully submitted,

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Dated: August 28, 1998

CERTIFICATE OF SERVICE

I, Jennifer L. Otterbein, do hereby certify that copies of the foregoing Reply Comments of Tyco Submarine Systems Ltd. have been sent by hand delivery or first-class mail (*), on this 28th day of August, 1998, to the following:

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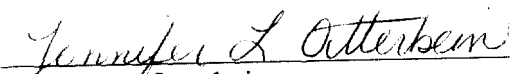
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